APPEAL NO. 043061
FILED JANUARY 24, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 7, 2004. The respondent (claimant) did not appear at the CCH and the hearing officer sent a "10 day" show cause letter to the claimant. Although the claimant timely responded to the letter the hearing officer apparently was not made aware of the response and entered a decision and order determining that the claimant's compensable injury of _____, does not include left shoulder impingement syndrome or lumbosacral radiculopathy and that the claimant did not have disability. The claimant appealed and in Texas Workers' Compensation Commission Appeal No. 041781, decided September 8, 2004, the Appeals Panel remanded the case for the hearing officer to consider the claimant's response to the 10-day show cause letter, determine whether the response was timely, afford the claimant with an opportunity to show good cause for her failure to attend the June 7, 2004, hearing and to allow for the presentation of evidence on the merits of the issues by both parties.

A CCH on remand was held on November 4, 2004. The hearing officer determined that the claimant had good cause for failing to appear at the June 7, 2004, hearing because of transportation difficulties and on the disputed issues determined that the compensable injury does not include left shoulder impingement syndrome or lumbosacral radiculopathy and that the claimant had disability from April 8 through August 24, 2003, and from August 30 through December 10, 2003, and that "disability after December 10, 2003, is not determined in this decision."[1] The hearing officer's determination on good cause and the extent of injury were not appealed and have become final. Section 410.169.

The appellant (carrier) appeals the disability issue, contending that the cause of the claimant's inability to obtain and retain employment at her preinjury wage was due to the left shoulder impingement, which had been found to be not part of the compensable injury. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. It is undisputed that the claimant, a custodian, sustained her compensable injury throwing a bag of trash into a dumpster. While not stipulated, the carrier accepted a chest sprain/strain. Although the hearing officer determined that the compensable injury did not include a left shoulder impingement syndrome (and

[1] The claimant testified that she had not worked since the date of injury, except for one week in August 2003, but the parties agreed to frame the issue as disability to December 10, 2003, when a designated doctor found the claimant at maximum medical improvement.

lumbosacral radiculopathy), he determined the claimant had the referenced periods of disability.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). The carrier argues that the Work Status Report (TWCC-73) forms filled out by the treating doctor took "the claimant off work due to her left shoulder impingement syndrome and for no other reason." We disagree. A report of December 9, 2003, in a treatment summary, notes secondary complaints "to the left costosternal [rib and sterum] region." Similarly a report dated May 29, 2003, from Dr. D, as well as TWCC-73 reports beginning June 16 through October 2, 2003, taking claimant off work or placing her at light duty all include as a work injury diagnosis "costosternal sprain." A claimant need only prove that the compensable injury was a cause of the disability. Texas Workers' Compensation Commission Appeal No. 931134, decided January 28, 1994.

We would also note that the issue was framed, and the hearing officer made his determination, rather narrowly and specific (i.e. did the compensable injury include left shoulder impingement syndrome). The hearing officer found that it did not, but that finding does not necessarily preclude any other left shoulder injury. In fact the carrier's closing argument stated "even if you [the hearing officer] were to find that there was some kind of injury to the Claimant's shoulder we would ask that it be limited to a sprain/strain." Further in workers' compensation cases, the issue of disability may generally be established by the claimant's testimony alone if believed by the hearing officer. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

The disputed issues in this case involved a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge